REMARKS

Claims 2-15 and 39-44 are pending.

OBJECTION TO THE DRAWINGS

The drawings have been objected to under 37 CFR 1.83(a).

The Examiner indicates that such elements as the order support server, graphical user interface, the first server, routing delivery path, arranging a return path, routing protocol, intermediate server, local computer and regional computer must be shown. The Examiner has failed to indicate which claims recite these elements.

This objection is respectfully traversed for the following reasons.

As indicated in 37 CFR 1.83(a), "the drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation."

Claim 2 recites an order support server causing the client terminal to produce a graphical user interface identifying goods available in a regional network that includes the selected point of sale.

As indicated in paragraph 36 of the specification, the ordering terminal provides customer's access to an order support server, which performs an ordering protocol at the Customer Support and Information Levels to provide the customer with ability to select and order required goods. Functions of an order support server may be carried out by a computer associated with a point of sale, a regional node or a district node. Alternatively, the order support

functions may be distributed among several computers arranged in various points of the retail network.

The ordering terminals OT, points of sales POS, regional node RN and servers S associated with the regional node RN are illustrated in FIG. 2. Servers S associated with district nodes DN are illustrated in FIG. 1. The Customer Support and Information Levels are illustrated in FIG. 3.

Hence, the drawings illustrate features relating to the claimed order support server. It is respectfully submitted that the drawings are sufficient for proper understanding of these features, as required by 37 CFR 1.83(a).

Further, paragraph 37 indicates that the order support server may cause the ordering terminal to produce a graphical user interface that displays goods available in stock at a node of a regional network corresponding to a point of sale selected by the customer for delivery of ordered goods.

Hence, one skilled in the art would realize that a graphical user interface is graphical presentation on a screen of the ordering terminal OT shown in FIG. 2. Therefore, separate illustration of graphical user interface is not required for proper understanding of the invention.

Moreover, as indicated in paragraph 36, an exemplary ordering protocol is described in copending U.S. patent application No. 10/354,025 filed on January 30, 2003 (now US patent 7,657,457) and incorporated herewith by reference. This patent application shows multiple examples of graphical user interfaces on the screen of the ordering terminal.

Further, claim 2 recites a first server associated with the first a selected node of the retail network located outside a regional network having the point of sale selected for delivery, and configured for receiving the request if the item is not available in the regional network, the first

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server is further configured for arranging a delivery path for delivery of the item from the first selected node to the selected point of sale.

The first server is shown in FIG. 1 as server S associated, for example, with specialty node SN.

Claim 2 recites that the first server is configured for routing the delivery path via the regional node of the regional network. Claim 3 recites that the first server is configured for routing the delivery path via the district node.

As described in paragraph 39, the delivery path may include a link from the specialty node SN to district node DN, and a link from the district node DN to the respective regional node RN. These links are shown in FIG. 1.

As described in paragraph 39, a routing protocol used for routing the delivery path may be carried out at the Transport and Distribution layers (FIG. 3) for arranging a path for delivery the required item from the specialty node SN to the selected point of sale.

As described in paragraph 40, the routing protocol may involve scheduling deliveries from the specialty node to the district node, from the district node to the regional node and from the regional node to the selected point of sale. The routing protocol may set a timetable for delivery from one point of the network to another. Each item transferred via the retail network of the present invention may be assigned with a source address corresponding to a point, from which it is being delivered, and a destination address corresponding to a destination point. A server associated with each intermediate node in the network may replace the destination address assigned to the item at the originating node with the destination address of the next point in the delivery path. Hence, goods may be routed from any source to any destination via designated

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intermediate nodes. The routing protocol may include producing a chain of addresses for delivery an item from a source to a destination.

It is respectfully submitted that one skilled in the art would need no additional illustration for proper understanding of the claimed invention.

Arranging a return path is explained in paragraph 42. In particular, if a customer is not satisfied with the delivered item, she is enabled to return it at a selected point of sale and receive an immediate refund. A server associated with the node of the regional network, that includes the selected point of sale, performs a routing protocol at the Transport and Distribution layers (FIG. 3) to arrange a path for delivery of the return item back to the specialty node. The delivery path for returning an undesired item includes links from the selected point of sale to the regional node, from the regional node to the district node and from the district node to the specialty node. The routing protocol for returning an undesired item includes scheduling delivery from the point of sale to the regional node, from the regional node to the district node and from the district node to the specialty node.

All elements involved in arranging the return path are shown in FIG. 1. No additional illustration is required for proper understanding of the claimed invention.

Further, examples of intermediate server (claim 41) are servers S associated with intermediate nodes DN and RN between a particular source and a particular destination.

Examples of a local computer and a regional computer (claim 44) are servers S associated with points of sale POS and regional nodes RN in FIG. 2.

Hence, FIGS. 1-3 of the drawings are sufficient to enable one skilled in the art to properly understand each feature of the claimed invention.

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REJECTION UNDER 35 U.S.C. 103

Claims 2-15 and 39-44 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Perkowski in view of Roach et al.

It is respectfully submitted that the rejection is defective.

The Examiner has initial burden to set forth the basis for any rejections so as to put the patent applicant on notice of the reasons why the applicant is not entitled to a patent on the claim scope that he seeks. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

It is noted that this principle of law was cited in the recent Precedential Opinion in *Ex Parte Nancy C. Frye* (PTO Bd.App. 2010) heard by a panel including David J. Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

It is respectfully submitted that the Examiner did not discharge this burden.

In particular, the Examiner has failed to address each of claims 2-15 and 39-44 to show why they are obvious over the applied prior art.

Instead, the Examiner states that "Perkowski, **as applied above** shows all of the limitations of the claims except for enabling the customer to specify placing an order for delivery from a first node to a selected point of sale and explicitly specifying the point of sale computer to provide information that requires a first bandwidth and the regional computer provides the customer with information that requires a second bandwidth more narrow than the first bandwidth."

However, the Office Action contains no statement, **above this statement**, that specifically indicates wherein Perkowski "shows all of the limitations of the claims," as the Examiner asserts.

Moreover, in the next statement, the Examiner lists some features of claim 2, but does not indicate specifically wherein **each of these features** is disclosed in the prior art. Instead, the Examiner relies upon FIG. 2 and paragraphs 107, 232, 416 and 1002.

Moreover, the Examiner misrepresented Perkowski. FIG. 2 and paragraphs 107, 232, 416 and 1002 do not disclose the claimed features listed in the Examiner's statement.

Applicant respectfully submits that this Examiner's statement failed to satisfy the law requirement to put the patent applicant on notice of the reasons why the applicant is not entitled to a patent on the claim scope that he seeks.

Therefore, the Applicant respectfully submits that the Examiner's rejection is defective and should be withdrawn.

Further, as demonstrated below, the prior art of record does not teach or suggest the subject matter of claims 2-15 and 39-44.

In particular, independent claim 2 recites that in a retail network comprising at least one district network including a district node and multiple regional networks, each having a regional node and multiple points of sale, a system for processing orders received from a client terminal capable of sending a request providing indication of an item being ordered and indication of a point of sale selected for delivery of the item, together with an identifier of a customer, the system comprising:

an order support server causing the client terminal to produce a graphical user interface identifying goods available in a regional network that includes the selected point of sale,

if the item is available in the regional network, the graphical user interface enabling the customer to place an order for delivery of the item within the regional network to the selected point of sale,

if the item is not available in the regional network, the order support server determining a first node outside of the regional network, at which the item is available, and enabling the customer to place an order for delivery of the item from the first node to the selected point of sale,

the order processing system further comprising a first server associated with the first node, and configured for receiving the request if the item is not available in the regional network, the first server being further configured for arranging a delivery path for delivery of the item from the first node to the selected point of sale.

As disclosed in the paragraphs relied upon by the Examiner, Perkowski discloses a product marketing, merchandizing and education/information system that enables distribution of web links to information kiosks in physical retail facilities.

The reference does not disclose a retail network comprising at least one district network including a district node and multiple regional networks, each having a regional node and multiple points of sale, as claim 2 recites.

Moreover, Perkowski does not disclose a system for processing orders received from a client terminal capable of sending a request providing indication of an item being ordered and indication of a point of sale selected for delivery of the item, together with an identifier of a customer, as claim 2 recites.

Further, Perkowski does not disclose an order support server causing the client terminal to produce a graphical user interface that enables the customer to place an order for delivery of

the item within the regional network to the selected point of sale, if the item is available in the regional network, as claim 2 requires.

Also, Perkowski does not disclose an order support server that determines a first node outside of the regional network, at which the item is available, and enables the customer to place an order for delivery of the item from the first node to the selected point of sale, if the item is not available in the regional network, as claim 2 requires.

Moreover, Perkowski does not disclose a first server associated with the first node, and configured for receiving the request if the item is not available in the regional network, the first server being further configured for arranging a delivery path for delivery of the item from the first node to the selected point of sale, as claim 2 requires.

If the Examiner disagrees, he is respectfully requested to point out specifically wherein Perkowski discloses each of the above-discussed features of claim 2.

The Examiner asserts that Roach et al. discloses enabling the customer to specify placing an order for delivery from a first node to a selected point of sale.

Roach et al. discloses an order and delivery system that integrates point of sale and warehouse processing functions to enable delivery of merchandise to customers in the shortest possible time.

However, Roach et al. does not teach or suggest determining the claimed first node outside of the regional network, at which the item is available, and enabling the customer to place an order for delivery of the item from this node to the selected point of sale, if the item is not available in the regional network.

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Therefore, this reference cannot suggests enabling the customer to specify placing an order for delivery from a node outside of the regional network, if the item is not available in the regional network, as claim 2 requires.

Accordingly, a combination of Perkowski with Roach does not teach or suggest the invention of claim 2.

Moreover, the Examiner admits that Perkowski does not explicitly disclose the subject matter of claim 44 that recites a local computer associated with the selected point of sale and a regional computer associated with a regional node, wherein the local computer provides the customer with information that requires a first bandwidth, and the regional computer provides the customer with information that requires a second bandwidth more narrow than the first bandwidth.

However, the Examiner indicates that "Perkowski implicitly discloses the point of sale providing information that would require more bandwidth than the regional computer (paragraphs [0036] – [0037])."

In the event the Examiner relied upon inherency without expressly indicating such reliance, the Examiner should be aware that inherency requires <u>certainty</u>, not speculation. *In re Rijckaert*, 9 F.3rd 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986); W. *L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983); *In re Oelrich*, 666 F.2d 578, 212 USPQ 323 (CCPA 1981); *In re Wilding*, 535 F.2d 631, 190 USPQ 59 (CCPA 1976). To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.

Inherency, however, may not be established by probability or possibilities. *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

The Examiner provided no factual basis upon which to conclude that the claimed feature is **necessarily** present in the Perkowski disclosure.

Moreover, as one skilled in the art would realize, the reference provides no reasons for such conclusion.

In particular, paragraph 0036 of Perkowski disclose a consumer product information access terminal located at a point-of-sale (POS) station, where a bar code reader can be used to read UPC numbers on consumer products, and an LCD screen displays product-related information from hyper-linked Web-sites.

Paragraph 0037 of Perkowski disclose computer based kiosk installed within retail shopping environment, having a bar code reader for reading UPC numbers on consumer products, and an LCD screen displaying product-related information from hyper-linked Web-sites.

Accordingly, Perkowski does not disclose a regional computer associated with a regional node of the retail network, and provides no reasons to conclude that the regional computer provides the customer with information that requires a bandwidth more narrow than the bandwidth of the information provided by the local computer, as claim 44 requires.

In view of the foregoing, and in summary, claims 2-15 and 39-44 are considered to be in condition for allowance. Favorable reconsideration of this application is respectfully requested.
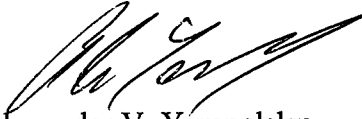
To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

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including extension of time fees, to Deposit Account 500417 and please credit any excess fees to

such deposit account.

Respectfully submitted,

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